IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2007

Coram:

The Honourable Mr. Justice V. DHANAPALAN

W.P. No.4324 of 1998

N. Selvam Petitioner

vs.

1 The Special Tahsildar-Land Acquisition
Harijan Welfare
Sengam
Tiruvannamalai District

2 The District Collector
Tiruvannamalai District
Tiruvannamalai Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus as stated therein.

For petitioner Mr. R.G. Rajan

For respondents Mr. V. Arun
Government Advocate

ORDER

This writ petition has been filed seeking to call for the records of the first respondent made in Proceedings No.NI-A/1099/96 dated 06.03.1998 purporting to be issued under Rule 5(a) and quash the same as illegal and forbearing the first respondent from taking any further action in pursuance thereof in respect of the following lands belonging to the petitioner situated in Porasapattu Village, Sengam Taluk, Tiruvannamalai District:

S.No.	Survey No.	Extent
1	58/1	0..43.0
2	57/1E	0.35.0
3	57/1D	0.81.0

2. The petitioner, his wife and their minor son who are the owners of the above extent of wet lands which is the main source of their sustenance and which lies low near a lake and gets inundated for about three months in a year during rainy season, received a notice dated 06.03.1998 purporting to be in Form III under Rule 5(i) of the Rules framed under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes - Tamil Nadu Act 31 of 1978 ("the Act" for

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

short) in and by which the Collector, Tiruvannamalai District resolved to acquire the above lands and also directed the petitioner to make his representation to the first respondent on 23.03.1998 at 3.00 p.m. Pursuant thereto, the petitioner made his representation on 23.03.1998 to the first respondent objecting the acquisition proceedings. On further enquiry, the petitioner came to know that a notice under Rule 3(i) was issued on 03.10.1997 in connection with acquisition of lands in three survey nos. which do not belong to him.

3. According to the petitioner, the Act requires that the District Collector should publish a notice in connection with acquisition in the District Gazette and before issuing the notice, the District Collector or his authorised officer should give notice to the land owner as to why the lands should not be acquired and only on the cause shown, the District Collector has to pass orders accordingly.

4. In other words, the petitioner's main case is that a notice under Rule 3(i) should be given to the owner as required under Section 4 of the Act and on receipt of objections, an opportunity should be given to the land owner to adduce evidence in support of his objections and only thereafter, the District Collector has to decide about the acquisition under Section 4(1) of the Act and after such decision, a further notice under Rule 5(i) should be given to the land owner and in the instant case, he was given a notice dated 06.031998 under Rule 5(i) without issuance of notice under Rule 3(i) and that apart, while only three items not belonging to him found place in the notice issued under Rule 3(i), the notice issued under Rule 5(i) contained the above three items in addition to six items including those belonging to him.

5. It is also the petitioner's contention that the proposed acquisition of his lands is not proper for the reasons that (i) his lands are situated three feet below the level of the nearby lake; (ii)there are high level non-agricultural extensive lands close the existing Harijan Housing Colony which are more suitable and whose owners do not have any objection in respect of acquisition of their lands; (iii) there is a burial ground very close to his lands which do not have access to the main road and (iv) the Government have specifically notified in the Proceedings dated 03.12.1981 that dry lands alone should be selected for acquisition.

6. In short, the petitioner's grievance is that, first of all, the notice required to be issued under Rule 3(i) was not at all issued to him and in the subsequent notice issued under Rule 5(i) dated 06.03.1998, his three items of land found place for the first time and he was not afforded an opportunity to show cause which is in contravention of the mandatory rules, thereby making the entire proceedings vitiated and hence, the present writ petition.

7. The first respondent has filed counter contending that a notice under Rule 3(i) was served on the land owner as early as on 25.09.1996 and not on 03.10.1997 as alleged by the petitioner and a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

copy of the notice was affixed in a conspicuous place of the village and published by beat of tom tom and on the basis of the records of enquiry, a proposal under Section 4(1) of the Act was submitted to the District Collector who, in turn, approved the proposal vide his Proceedings Rc.K1/67400/96 dated 17.11.1997 published in the District Gazette dated 25.11.1997 subsequent to which notice under Rule 5(i) dated 06.031998 came to be issued, thereby fixing the date of enquiry on 23.03.1998 and upon receipt of written objection statement from the petitioner, the said objection was over-ruled and an award was passed on 24.031998 after getting the approval of the District Collector fixing the land value at Rs.25,000/- per acre and since the petitioner did not turn up to receive the compensation amount, it was deposited into the Sub-Treasury, Sengam for Revenue Deposit and as such, the land acquisition proceedings are not vitiated by any illegality or irregularity.

8. It is further stated in the counter that in the Revenue Registers, only S.Nos.58/1 and 57/D stand registered in the name of the petitioner, his wife and son and that too are classified as dry lands and not as wet lands as alleged by the petitioner; the petitioner's lands are at par with the adjoining lands and not three feet low as alleged by him; no other suitable lands were available for acquisition near the existing Adi Dravidar colony and hence, the petitioner's lands were proposed to be acquired; and there is no samadhi or burial ground near the petitioner's lands and his lands do have access to the main road through the present Adi Dravida colony.

9. Heard Mr. R.G. Rajan, learned counsel for the petitioner and Mr. V. Arun, learned Government Advocate appearing for the respondents.

10. The learned counsel for the petitioner has contended that the entire proceedings are vitiated by non-issuance of notice under Rule 3(i) thereby depriving the petitioner of opportunity to show cause before the issuance of notice under Rule 5(i). It is also his contention that even assuming that notice under Rule 3(i) was issued, it is not valid since the lands specified in it do not belong to the petitioner.

11. He has further contended that the impugned order passed by the first respondent seeking to acquire the petitioner's wet lands is liable to be set aside inasmuch as the Government itself has specifically notified in its proceedings dated 03.12.1981 that dry lands alone should be selected for acquisition.

12. The learned counsel for the petitioner, in support of his arguments, has placed reliance on:

i. a Division Bench judgment of this Court in the case of Jainabi vs. State of Tamil Nadu represented by the Secretary to Government, Adi Dravida Welfare Department, Chennai and another reported in (2006) 4 MLJ 71 (para 8)

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

"On the above discussions, we hold that the District Collector is the only competent authority to exercise the power under Section 4(1) of the Act for issue of notification and such power cannot be delegated to any other officer including the Additional Collector in whose name the notification has been issued. We also hold that the power under Section 16 can be invoked by the Government only in respect of the power conferred or any duty imposed on them and such power cannot be extended by delegating the power of the District Collector to issue the notification under Section 4(1) to the Additional Collector. As we have found merit in the first contention and, on such finding, the notification is liable to be quashed, we are not inclined to go into the next contention of the learned counsel for appellant relating to the failure on the part of the respondents to serve the proceedings of the Tahsildar. Accordingly, the writ appeal is allowed and the acquisition proceedings are quashed.. . ."

ii. yet another Division Bench judgment of this Court in the case of Chinna Gounder v. The District Collector, Salem and another reported in (2006) 4 MLJ 1328 (para 7):

"As per the Tamil Nadu Act, if any land is sought to be acquired for the purpose of Harijan Welfare Scheme, it is for the District Collector, who is the competent authority, to initiate proceedigns. This is evident from sub-section (1) of Section 4. Sub-section (2) enables the District Collector or any Officer authorised by the District Collector to call upon the owner or any other person interested in such land to show cause as to why it should not be acquired. As per sub-clause (a) of sub-section (3), if the District Collector issues notice to the owner, it is for him to pass an order based on the objection of the land owner. Sub-clause (b) of sub-section (3) makes it clear that when any Officer authorised by the District Collector, viz., Tahsildar, issues notice to the land owner calling upon his objection, if any, on receipt of the same, he has to make a report to the District Collector containing his recommendations on the cause so shown, for the decision of the District Collector."

13. Per contra, the learned Government Advocate has contended that inasmuch as the notice under Rule 3(i) was issued as early as on 25.09.1996 and was also served by way of affixture in a conspicuous place of the village, the case of the petitioner that notice under Rule 5(i) was issued without issuance of notice under Rule 3(i) has to fall to ground. By placing reliance on the Revenue Registers, the learned Government Advocate rebutted the petitioner's case that his lands are wet lands and contended that his lands are only dry lands and accordingly, notice under Rule 5(i) was issued after issuance of notice under Rule 3(i) and after getting the proposal approved by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

second respondent and as such, there is no irregularity or illegality whatsoever in the acquisition proceedings initiated by the respondents.

14. I have given careful thought to the submissions made by the learned counsel on either side and the reliance placed by the learned counsel for the petitioner on the two judgments in support of the petitioner's case.

15. The main point for consideration in this petition is as to whether the respondents have proceeded in accordance with the procedure contemplated while acquiring the lands from the petitioner for a public cause.

16. On a perusal of the entire records, it is seen that the following is the procedure adopted by the respondents against the petitioner in the course of the land acquisition proceedings meant for provision of housesites to the houseless Adi Dravidars of the Porasapattu village in Sengam Taluk under the provisions of the Act:

a. while the Notice under Rule 3(i) was served on the petitioner, the copy of the same was also affixed in a conspicuous place of the village and was also published by beat of tom tom;

b. proposal under Section 4(1) of the Act was submitted to the Collector of Tiruvannamalai District who approved the same vide his Proceedings dated 17.11.1997 and it was published subsequently in the Tiruvannamalai Gazette on 25.11.1997.

c. Notice in Form III dated 06.03.1998 was served on the petitioner by way of affixture as he was not available for personal service and published in the village in a conspicuous village fixing the date of enquiry on 23.03.1998 and the petitioner also had filed his written objection on 23.03.1998 which was over-ruled.

d. The award came to be passed on 24.03.1998 after getting approval of the Collector fixing the land value at Rs.25,000/- per acre.

e. The award amount was deposited into the Sub-Treasury, Sengam for revenue deposit as the petitioner did not turn up to receive the compensation amount.

17. Apart from the above, the perusal of the records also drives home the factual details such as that (i) in the revenue register, S. No.58/1 and 57/1D alone stand registered in the name of the petitioner, his wife and his minor son and not S.No.57/1E which stands registered in the name of one Kuppammal; (ii) Notice under Rule 3(i) was served on the petitioner as early as on 25.09.1996 and not on 03.10.1997 as claimed by the petitioner; (iii) the lands in question are classified as Government dry lands and not as wet lands

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

as alleged by the petitioner; and (iv) there is no samadhi or burial ground near the petitioner's land sought to be acquired by the impugned order.

18. But, on the side of the petitioner, there is no proof whatsoever to sustain his contentions that (a) the land in S.No.57/1E stands in his name, (b) Notice under Rule 3(i) was served on him only on 03.10.1997 and not on 25.09.1996, (c) his lands are wet lands and (d) there is a samadhi or burial ground near his lands.

19. As far as the reliance made by the learned counsel for the petitioners on the judgment reported in (2006) 4 MLJ 71 is concerned, this Court is of the considered view that it deals with the question of jurisdiction which has not been pleaded and which is also not a question arisen for consideration in the facts and circumstances of the instant case and hence, this Court is not inclined to consider the same. Coming to the judgment reported in (2006) 4 MLJ 1328 relied on by the learned counsel for the petitioner, it deals with non-consideration of material records which is not so in the instant case. As such, this judgment too will not support the cause of the petitioner.

20. Further, it is to be borne in mind that the Act has been enacted for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular, Article 46 of the Constitution of India aimed at bringing the under-privileged to the main stream of life in order to achieve egalitarian order of the society and the main policy of acquiring lands is to assign such lands to them.

21. Lastly, it is to be stated that the Supreme Court in its judgment reported in (2003) 4 SCC 485 in the matter of Tej Kaur v. State of Punjab has categorically held that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed and this has also been followed by the First Bench of this Court in the decision reported in 2005 (3) CTC 691 in the case of S.Harshavardhan and another vs. State of Tamil Nadu, represented by the Secretary to Government, Industry Department, Fort St. George, Chennai - 600 009 and the relevant paragraph read as under:

> "3. It has been repeatedly held by the Supreme Court in Tej Kaur v. State of Punjab, 2003 (4) SCC 485 that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.03.1994 whereas the writ petition was filed on 12.04.1994 i.e. After the award was given. Hence, the writ petition was dismissed as belated. Similarly in Municipal Council, Ahmednagar v. Shah Hyder Beig, AIR 2000 SC 671, the Supreme Court observed vide paragraph 17:
>
> "In any event, after the award is passed, no writ petition can be filed challenging the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

acquisition notice or against any proceedings thereunder."

. . . Hence, without going into the merits of the case, we are of the opinion that the writ petition was rightly dismissed on the ground of laches. . . ."

22. Since the instant case also has been filed subsequent to the passing of the award on 24.03.1998, the writ petition is liable to be dismissed on the ground that it cannot lie once an award is passed as held by the Supreme Court and followed by the First Bench of this Court as stated above.

23. Thus, considering the facts and circumstances of the case and the judgment of the Supreme Court reported in (2003) 4 SCC 485 and also the First Bench judgment of this Court reported in 2005 (3) CTC 691 referred to above, I find no reason to quash the impugned order dated 06.03.1998 passed by the first respondent and accordingly, the same is upheld.

Resultantly, the writ petition is dismissed without any order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad

To
1 The Special Tahsildar-Land Acquisition
Harijan Welfare
Sengam
Tiruvannamalai District

2 The District Collector
Tiruvannamalai District, Tiruvannamalai

+ 1 CC to the Government Pleader SR NO 74366

+ 1 CC To Mr. R.G.Rajan, Advocate SR NO.74204

W.P. No.4324 of 1998

ssk[co]
gp/9.1.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/